IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 87 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAXABEN NILESHKUMAR SHAH

Versus

NILESHKUMAR PRAVINCHANDRA SHAH

Appearance:

1. Criminal Revision Application No. 87 of 2002

MR KL DAVE for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

MR SUDHANSHU PATEL, APP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/03/2002

ORAL JUDGEMENT

1. This Criminal Revision Application under Section 397 R/w 401 of CrPC is filed by the petitioner wife

against the order dated 30.3.2001 passed by the Presiding Officer of Court No.4, Family Court, Ahmedabad while dealing with Cri.Misc. Application No. 4333/2000. Initially, an application for maintenance under Section 125 of CrPC was filed in the Court of ld. Metropolitan Magistrate, Ahmedabad on 30.11.1998, but on establishment of Family Court for the city of Ahmedabad, the said maintenance application pending before the ld. Metropolitan Magistrate came to be transferred to the Family Court, Ahmedabad and numbered as Cri. Misc. Application No. 4333/2000.

2. Respondent husband, though served, did not appear before the Family Court and on the strength of the evidence led by the present petitioner wife, vide order dated 30.11.1998, Family Court allowed maintenance application and granted maintenance at the rate of Rs.500/ per month from the date of order i.e. from 30.3.2001.

3. The submission of ld. counsel Mr. Dave appearing for the petitioner wife is that the Presiding Officer of the Family Court has committed serious error in not granting maintenance amount from the date of the application i.e. from 30.11.1998. According to Mr. Dave, ld. Presiding Judge ought to have assigned reasons for not granting maintenance from the date of application. It is not challenged that she has been deserted by her husband- Respondent No.1. It has remained unchallenged that the monthly income of the respondent husband is around Rs.10,000/ and she is totally dependent on her father. Ld. Presiding Judge of Family Court is legally authorised and empowered to award amount of maintenance from the date of application and/or from the date of order. Whether non-grant of maintenance from the date of application can be said to be an error committed by the ld. Presiding Judge and if answer is in affirmative, whether this error can be said to be serious error which can be rectified by this Court in exercise of revisional powers under Section 397 R/w Section 401 of CrPC., are the questions.

4. Undisputedly, the proceedings before the ld. Family Court under Section 125 CrPC can be said to be the proceedings of quasi civil and quasi criminal nature. When it was specifically prayed by the petitioner wife that she may be granted maintenance from the date of application, non-grant of such a prayer would amount to rejection of that part of the prayer. When the Court is not granting some important prayer or part of such prayer in the proceedings which are quasi civil and quasi

criminal nature, then it would be obligatory on the part of the Court to assign reasons as to why maintenance though prayed for from the date of application has not been granted from that date. Non-assignment of reasons by the Presiding Officer of the Family Court, therefore, can be termed as serious error committed in a judicial proceedings and, therefore, this Court can interfere and rectify the same in exercise of revisional powers under Section 397 R/w Section 401 of CrPC. Non grant of maintenance from the date of application should, therefore, be on reasons, otherwise, it may frustrate either party.

5. It is pertinent to note that in the present proceedings also, respondent husband though served, has chosen not to appear before this Court.

6. Ld. APP Mr. Sudhanshu Patel has nothing to add.

7. For the reasons aforesaid, Criminal Revision Application is allowed. Impugned order dated 30.3.2001 passed by ld. Presiding Judge, Court No.4 of Family Court, Ahmedabad in Misc. Criminal Application No. 4333/2000 is hereby corrected and rectified to the effect that the petitioner wife shall be entitled to maintenance at the rate of Rs.500/ per month from the respondent husband from the date of her application i.e. 30.11.1998 and not from the date of order i.e. 30.3.2001 as ordered by the ld. Presiding Judge of the Family Court. Rest of the order under challenge stands unaltered.

8. Rule is made absolute.

27.3.2002 [C.K. BUCH, J]
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